



BILLING CODE: 6750-01-S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities;

Request for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice and request for comment.

SUMMARY: The information collection requirements described below are being submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC is seeking public comments on proposed information requests to beverage alcohol advertisers that will seek information concerning, among other things, sales and marketing expenditures, compliance with voluntary advertising placement provisions, digital marketing practices and data collection, and lesser-known media programs.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested parties may submit written comments by following the instructions in the “Request for Comments” part of the SUPPLEMENTARY INFORMATION section below.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed to Janet M. Evans, Attorney, 202–326–2125, or Carolyn L. Hann, Attorney, 202–326–2745, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission.

SUPPLEMENTARY INFORMATION:

The FTC has previously published reports on voluntary advertising self-regulation by the alcohol industry in September 1999, September 2003, and June 2008.¹ The data contained in the reports were based on information submitted to the Commission, pursuant to compulsory process, by U.S. beverage alcohol advertisers. The FTC has authority to compel production of this information from advertisers under Section 6 of the Federal Trade Commission Act (FTC Act), 15 USC 46. The Commission believes that it is in the public interest to: (1) collect updated data from alcohol advertisers on sales and marketing expenditures, compliance with voluntary advertising placement provisions, digital marketing practices and data collection, and lesser-known media programs; and (2) publish a report on the data obtained.

Under the PRA, 44 USC 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 USC 3502(3), 5 CFR § 1320.3(c).

On February 25, 2011, the Commission sought comment on the information collection requirements associated with this proposal. 76 FR 10596. (60-Day Notice). As required by OMB regulations, 5 CFR Part 1320, the FTC is providing this second

¹ See FTC, *Self-Regulation in the Alcohol Industry* (Sept. 1999), available at <http://www.ftc.gov/reports/alcohol/alcoholreport.shtm>; FTC, *Alcohol Marketing and Advertising* (Sept. 2003), available at <http://www.ftc.gov/os/2003/09/alcohol08report.pdf>; and FTC, *Self-Regulation in the Alcohol Industry* (June 2008) (“2008 FTC Alcohol Report”), available at <http://www.ftc.gov/os/2008/06/080626alcoholreport.pdf>.

opportunity for public comment while seeking OMB approval for the collection of information.

A. Public Comments/Consultation Outside the Agency

The FTC received 71 comments in response to the 60-Day Notice. Of these, four comments favored and substantively addressed the proposed data collection. These comments were submitted by: (1) State Attorneys General representing 23 states and one territory² (State AG); (2) the Center for Alcohol Marketing and Youth (CAMY); (3) the Center for Digital Democracy (CDD)³; and (4) University of Connecticut School of Medicine (UConn Medical School). One comment, submitted by The Marin Institute, offered substantive recommendations but also expressed concerns about self-regulation.⁴ Two additional comments offered limited recommendations regarding the proposed data collection.⁵ The remaining 64 comments did not substantively address the proposed data collection.⁶

1. General Support for the Data Collection

In its 60-Day Notice, the FTC sought comments regarding whether the proposed collection of information is necessary for the proper performance of the functions of

² The State AGs represented: Arizona, Connecticut, Delaware, Guam, Hawaii, Idaho, Illinois, Iowa, Maryland, Massachusetts, Mississippi, Nevada, New Hampshire, New Mexico, New York, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wyoming.

³ CDD, Alcohol Marketing in the Digital Age (May 2010) (“CDD White Paper”). A private citizen also submitted the CDD White Paper as an attachment to her comment.

⁴ See further discussion about The Marin Institute comment at Section A.3.c, below.

⁵ These were submitted by a private citizen in Michigan (also referenced in note 3, above) and the Mesilla Valley DWI Resource Center in New Mexico. The recommendations in these comments are discussed in notes 11 and 13, below.

⁶ See discussion at Section A.3., below.

the FTC.⁷ The State AG and CAMY comments expressed strong support for the FTC's proposed data collection. Specifically, they stated that this information was essential to the FTC's performance of its regulatory duties and in the public interest.

2. *Suggestions for Improvements to Proposed Information Collection*

In its 60-Day Notice, the FTC invited comments regarding ways to enhance the quality, utility, and clarity of the information to be collected.⁸ The FTC received substantive suggestions for enhancing its proposed collection of alcohol advertising data regarding the following specifications: (1) expenditure data; (2) advertising placement; and (3) digital marketing and data collection. The FTC also received several suggestions that did not fall within a particular specification.

a. Expenditure Data

In its 60-Day Notice, the FTC stated that it would seek company data regarding expenditures to advertise and promote beverage alcohol in measured and non-measured media. The State AG and CAMY comments exhorted the FTC to seek advertising and promotional expenditures from the alcohol industry on an "ongoing and regular basis," rather than intermittently. Both comments explained that the media landscape is changing daily. To understand how and where industry is advertising and to what extent the youth are exposed, the comments argued, the FTC should obtain these data from industry every two to three years, if not annually.⁹ The FTC will consider this recommendation in the course of developing its report.

⁷ See 60-Day Notice, 76 FR 10596, 10597 (Feb. 25, 2011).

⁸ See 60-Day Notice, *id.* at 10597.

⁹ While the FTC has not sought these data on an annual basis, it has been actively monitoring the alcohol industry. The FTC has collected expenditure data as part of its ongoing study and report process since the late 1990s. These studies have resulted in reports issued in 1999, 2003, and 2008. Since 2008, the staff has

b. Advertising Placement Issues

Until very recently, the voluntary codes of the Beer Institute, the Distilled Spirits Council of the United States, and/or the Wine Institute (collectively, “voluntary codes”) each stated that alcohol advertising should be placed in television, radio, and print communications only where at least 70% of the audience is reasonably expected to be above the legal purchase age (the “70% placement standard”).¹⁰ In the 60-Day Notice, the FTC stated that it planned to seek data on advertising placement, including industry compliance with the 70% placement standard.

The State AG and CAMY comments encouraged the FTC to recommend that the voluntary codes increase their placement standard from 70% to 85%.¹¹ Citing a 2004 recommendation by the Institute of Medicine’s Committee on Developing a Strategy to Reduce and Prevent Underage Drinking, the State AG and CAMY comments argued that youth exposure to alcohol advertising on television has grown since 2004 at a rate faster than that of adults or young adults. The State AG and CAMY comments also highlighted as an example Beam Global Spirits & Wine Inc., an alcohol company that since 2007 has voluntarily and gradually increased its placement standard to 85% for its aggregate

engaged in both formal and informal monitoring of alcohol self-regulatory efforts. For example, between 2009 and 2010, the Commission issued 6(b) Orders to six mid-sized alcohol companies.

¹⁰ On May 26, 2011, the Beer Institute and the Distilled Spirits Council of the United States (“DISCUS”) each announced that they would increase their placement standard from 70% to 71.6% to reflect the recently published results of the 2010 U.S. Census data, which showed that 71.6 percent of the U.S. population is 21 years of age and older. See Beer Institute press release, “Beer Institute Revises Advertising Standard Based on New U.S. Census Data” (May 26, 2011), available at <http://www.beerinstitute.org/BeerInstitute/files/ccLibraryFiles/Filename/000000001167/Updated%20Ad%20Code%20with%20Census%20Data%20-%20FINAL%205-26-11.pdf>; DISCUS, “Distilled Spirits Industry Updates Advertising Guidelines Based on Newly-Released Census Data” (May 26, 2011), available at http://www.discus.org/media/press/article.asp?NEWS_ID=631. To date, the Wine Institute has not announced any changes to its placement standard.

¹¹ This recommendation to increase the placement standard to 85% was echoed by a private commenter from Michigan.

average by brand and by medium. The FTC will consider these recommendations in the course of developing its report.

The State AG and CAMY comments recommended that the FTC seek brand-specific placement data and provide a brand analysis in its upcoming report. The UConn Medical School comment also recommended that the FTC seek data in connection with specific ads or ad campaigns. The Commission's compulsory process orders to alcohol companies will, as they have in the past, collect advertising placement data for each individual ad for individual brands. In the course of reviewing these data, the FTC will evaluate whether specific brands have placement compliance problems. Nonetheless, because Section 6(f) of the FTC Act, 15 USC 46(f), protects confidential commercial information that is submitted to the agency, the Commission cannot publicly identify advertising data on particular brands or companies.

c. Digital Marketing and Data Collection

In its 60-Day Notice, the FTC stated that it would seek information from the alcohol industry about data collection efforts, including data collection in connection with digital and social media marketing, and efforts to avoid collection of data from youth under the legal drinking age of 21. The FTC received extensive and detailed recommendations regarding its proposed collection of digital marketing and data collection. These recommendations were provided by the CDD, the State AGs, CAMY, and The Marin Institute.

The CDD White Paper expressed concern that online advertising has evolved without sufficient public analysis or regulatory oversight. It outlined key concepts and practices that have been guiding the growth of interactive marketing in the alcohol

industry, including the creation of a “high-definition media and marketing ecosystem”¹² that integrates advertising, editorial content, audience measurement, and content delivery; the growth of distribution platforms such as social media, online video channels, and virtual worlds; and targeted marketing to the African-American and Latino communities.

The State AG comment observed that alcohol advertising has substantially increased its presence online. The comment identified one brand that advertises solely in social media and another company that employed “extensive, world-wide use of social media” for a recent World Cup-related advertising campaign.¹³ The CAMY comment echoed the concerns cited by the State AG comment.

Accordingly, the CDD, State AG, CAMY, and The Marin Institute comments requested that the FTC seek a variety of information regarding digital marketing and data collection practices. These practices included: marketing and data collection on both corporate-sponsored websites as well as websites operated by third parties, age-verification mechanisms on such websites, and marketing practices on social media sites.

The FTC’s information requests will take account of the comments and changing technology and seek information about alcohol companies’ digital marketing and data collection practices, including data collected about consumers on corporate-sponsored websites and those operated by third parties. The FTC will consider these commenters’

¹² It particularly noted three aspects of the high-definition media and marketing ecosystem: (a) engagement, i.e., the creation of a marketing environment where consumers interact with brands and integrate them into their personal and social relationships; (b) data collection and behavioral targeting, such as digital advertising campaigns that encourage users to provide their personal information in order to participate in a design contest; and (c) a “360-degree strategy” that aims to keep consumers continuously plugged into their advertising campaigns, whether they are online or in the real world.

¹³ Similarly, the Mesilla Valley DWI Resource Center comment stated that the FTC should seek information regarding the extent to which the alcohol industry is shifting its advertising to the Internet and to what extent those websites and social media sites are following the voluntary codes.

recommendations about digital marketing and data collection in the course of developing its report.

d. Lesser-Known Media Programs

The UConn Medical School comment recommended that the FTC specifically seek expenditure data for product placements in television and film, including the type of product depicted and to whom the compensation was paid. The FTC's information requests will seek expenditure data for product placements in general, as well as the type and title of the entertainment vehicle in which such product placement appeared, and whether compensation was made in the form of monetary payment or an in-kind provision (e.g., products or other logoed items).

e. Other Recommendations About Data Collection

The UConn Medical School comment offered many recommendations for the types of data the FTC should seek in its data collection. In particular, the comment suggested gathering specific data about the voluntary codes' complaint review procedures and the composition of their complaint review boards. For example, the comment recommended that the FTC seek data regarding the complaint review process, such as procedures for evaluating complaints. The comment also recommended that the FTC seek information regarding the qualifications, compensation, and conflicts of interest of complaint review board members.¹⁴

The Commission agrees that complaint review procedures are a critical component of self-regulation. In past studies, the compulsory process orders specifically

¹⁴ The UConn Medical School comment also suggested that the FTC gather specific information about advertising strategy, content, and substantiation. The comment recommended that the FTC seek a variety of data, ranging from the ages of actors who appeared in alcohol advertising for television and print to substantiation for health benefits claims made about low-carbohydrate beers. The Commission believes the level of specificity in these recommendations exceeds the scope of the study.

sought information about the complaint review process from individual companies; ultimately, the information was provided voluntarily by the three alcohol trade associations. Similarly, for this study, the Commission plans to seek information about the complaint review process and related issues from the trade associations.

3. *Other Comments*

As noted earlier, the FTC received 64 comments in response to the 60-Day Notice that did not address the proposed data collection. These comments fall into three broad categories: (1) comments opposing the FTC’s study concept in general; (2) comments seeking stricter self-regulation; and (3) comments calling for an end to self-regulation, to be replaced by a government ban or curtailing of alcohol advertising.

a. Comments Opposing Study Concept

Three comments expressed disagreement with the general concept of studying the alcohol industry. These were submitted by: (1) one university; (2) one non-governmental organization; and (3) one anonymous commenter. Each of these commenters offered a different reason: one argued that there was no causal connection between alcohol advertising and youth drinking; another argued that the damage already had been done, so the FTC’s study would come too late; and the final one argued that “we are taxed enough” without adding anything further other than requesting confidential treatment. As noted earlier, the FTC believes that its information requests are in the public interest and essential to the agency’s performance of its regulatory duties.

b. Comments Seeking Stricter Self-Regulation

Two comments advocated for more “teeth” in self-regulation. First, the Cambridge Prevention Coalition and Bluegrass Prevention comments advocated for

objective standards to judge the content of alcohol advertising. Second, the Bluegrass Prevention comment stated that the alcohol industry should be required to take reasonable steps to ensure that their brands are not promoted by fans and other third parties online (e.g., social media) in a way that violates the voluntary codes. The FTC will consider these recommendations in the course of developing its report.

c. Comments Calling for an End to Self-Regulation

The vast majority of comments received – 60 – called for an end to alcohol industry self-regulation and advocated for more active government regulation. These were submitted by: (1) five local government agencies; (2) 24 non-governmental agencies; (3) two religious organizations; (4) one research institute; and (5) 28 individuals. The Marin Institute comment described industry self-regulation as a “complete failure.” Marin, along with an individual commenter, called for the existing compliance review boards to be replaced by a “truly independent third party review board that includes public interest representatives.” Other comments, including many submitted by individuals, called for alcohol advertising to be banned or curtailed to reduce the likelihood of youth exposure to the ads.

B. Information Requests to the Beverage Alcohol Industry

The FTC proposes to send information requests to the ultimate U.S. parent companies of up to fourteen advertisers of beer, wine, or distilled spirits (“industry members”). The requests will seek, among other information, data regarding: (1) sales of beverage alcohol; (2) expenditures to advertise and promote beverage alcohol in measured and non-measured media; (3) compliance with the 70% placement standard contained in the industry’s self-regulatory codes as of January 1, 2011; (4) digital marketing practices and

data collection, including efforts to avoid collection of data from youth under the legal drinking age of 21; and (5) descriptions of lesser-known media programs, such as point-of-sale advertising, product placement, and social responsibility programs. A description of the proposed specifications, subject to further public comment, is located at <http://www.ftc.gov/fedreg2011/11/111121alcoholstudypra2supp.pdf>

It should be noted that subsequent to this notice, any destruction, removal, mutilation, alteration, or falsification of documentary evidence that may be responsive to this information collection within the possession or control of a person, partnership, or corporation subject to the FTC Act may be subject to criminal prosecution. 15 USC 50; see also 18 USC 1505.

C. Estimated Annual Hours and Labor Cost Burdens

1. Estimated Hours Burden: 8,680 hours

The staff's estimate of the hours burden is based on the time required to respond to each information request. Because beverage alcohol companies vary in size, the number of products they sell,¹⁵ and the extent and variety of their advertising and promotion efforts, the staff has provided a range of the estimated hours burden. As noted above, each company will receive information requests pertaining to five categories of information.

Based upon its knowledge of the industry, the staff estimates, on average, that the time required to gather, organize, format, and produce responses to the proposed orders will range between 300 and 620 hours per company. The total estimated burden per company is based on the following assumptions:

¹⁵ In 2007, the top 12 alcohol suppliers alone reported selling 1,133 brands. See 2008 FTC Alcohol Report, available at <http://www.ftc.gov/os/2008/06/080626alcoholreport.pdf>.

- (1) Identify, obtain, and organize sales information,
prepare response: 30 - 70 hours
- (2) Identify, obtain, and organize information on
advertising and marketing expenditures, prepare response: 50 - 130 hours
- (3) Identify, obtain, and organize placement information,
prepare response: 120 - 280 hours
- (4) Identify, obtain, and organize information regarding
digital marketing practices and data collection,
prepare response: 80 - 100 hours
- (5) Identify, obtain, and organization information regarding
lesser-known media programs: 20 - 40 hours

Conservatively, the staff estimates that the burden per company for each of up to fourteen intended recipients will be 620 hours. Accordingly, the staff estimates a total burden for these companies of approximately 8,680 hours (14 companies \times 620 average burden hours per company). These estimates include any time spent by separately incorporated subsidiaries and other entities affiliated with the ultimate parent company that has received the information request.

2. *Estimated Cost Burden: \$186,000*

It is difficult to calculate with precision the labor costs associated with the information requests, as the costs entail varying compensation levels of management and/or support staff among companies of different sizes. Financial, legal, marketing, and clerical personnel may be involved in the information collection process. The staff has assumed that professional personnel and outside legal counsel will handle most of the

tasks involved in gathering and producing responsive information, and has applied an average hourly wage of \$300/hour for their labor. Thus, the staff estimates that the total labor costs per company will range between \$90,000 ($\300×300 hours) and \$186,000 ($\300×620 hours).

The staff estimates that the capital or other non-labor costs associated with the information requests will be minimal. Although the information requests may necessitate that industry members maintain the requested information provided to the Commission, they should already have in place the means to compile and maintain business records.

D. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [insert date 30 days from FEDERAL REGISTER date of publication]. Write “Alcohol Reports: Paperwork Comment; Project No. P114503” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information such as an individual’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You also are solely responsible for making sure that your comment does not include any sensitive health information, such

as medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential . . . ,” as provided in Section 6(f) of the FTC Act, 15 USC 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you would like the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/alcoholstudy2011pra2>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov>, you also may file a comment through that website.

If you file your comment on paper, write “Alcohol Reports: Paperwork Comment; Project No. P114503” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113

(Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [insert date 30 days from FEDERAL REGISTER date of publication]. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.shtm>.

Comments on the information collection requirements subject to review under the PRA should also be submitted to OMB. If sent by U.S. mail, address comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, N.W., Washington, D.C. 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395-5167.

David C. Shonka
Acting General Counsel.

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